David A. Stawick
Secretary
U.S. Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

Dear Mr. Stawick:

Re: CFTC's Implementation of Position Limits. Proposed Rule 76 FR 4752

National regulation in a global marketplace is a very difficult balancing act. Obviously some degree of regulation is necessary, but too much just incentivizes global participants to conduct their business elsewhere and through less desirable channels. In many ways, I realize, the CFTC has at-least one arm tied behind its back in its regulatory efforts. As proposed, however, the economic costs of position limits far outweighs the potential benefits. A balance can be struck.

The equity reporting model outlined in Securities Exchange Act rule 13D needs to be used as a guide for successful soft position limits. If an investor wants to own more than 5% of a publicly traded company they must report their holdings. These holdings become a matter of public record. A similar model for speculative limits in commodities would be much more successful than hard limits. Essentially, if a speculator, not a bona-fide hedger, has a position above the proposed hard limit level, the breaching investor should be required to publicly report his futures, options, swap, or other positions with the same underlying. This will act as a serious deterrent for many would-be position limit violators. It will not, however, force business to less regulated derivatives and physically backed holdings. Given that the 13D model has been a proven success in equities, it seems like a very clear choice for position limits in commodity futures. I recognize, however, that the CFTC would need to be granted extra authority by Congress to enact such a provision. Currently the Commodities Exchange Act does not allow the CFTC to publicly disclose a participants positions. This exception, as I understand it, would have to be granted by an act of congress.

Investor's will always find creative ways around the US based regulation. Hard position limits, as proposed, all but forces commodity investors to use less regulated non-US derivatives and to hoard physical commodities. The proposed rule, actively shifts investor's incentives away from regulated US exchanges and towards darker areas of the financial markets, outside of the purview of the CFTC. Moreover, with the recent emergence of physically backed ETFs (eg. GLD, PPLT, PALL, SIVR), physical hoarding of commodities is easier than ever. These instruments buy and store the physical commodity for the investor. All an investor has to do to own physical product is purchase the ETF like any other publically traded equity. If forced to find commodity exposure above a hard capped position limit institutions will hoard physical commodities.

The regulation needs to focus on end-users not the passive facilitators. More specifically, ETF's that hold commodity futures operate as a passive investment vehicle for anyone with a brokerage account to invest in commodity futures (eg. USO, UNG). As proposed, these instruments would have to limit their size. This is like limiting the size of the car dealership as opposed to limiting the number of cars in each driveway . These ETFs, however, would have no problem reporting their positions. In fact, their positions are currently posted on their own websites. By adopting my proposed soft position limits these vehicles can still exist. Not allowing them to exist and grow will push people most logically into physically backed ETFs.

I strongly urge the commission to avoid pushing market participants into physical commodities and less regulated venues. The principle behind a public reporting level is simple. Regulators allow large positions, including those of large passive ETFs. However, when positions get above the position limit level, those institutions need to publically disclose their holdings. Large speculators will be deterred without forcing market participants to physically hoard commodities or trade in unregulated markets.

Sincerely,

Mark Fisher
President & CEO
MBF Clearing Corp.